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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ERIN HANKS, et al.,

Plaintiffs,

vs.

BRIAD RESTAURANT GROUP, LLC., a
New Jersey limited liability company; and
DOES 1 through 100, inclusive,

Defendant.

Case No. 2:14-cv-00786-GMN-PAL

**DEFENDANT'S MOTION FOR LEAVE TO
FILE SUR-REPLY IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT REGARDING
LIMITATION OF ACTION**

AND ORDER

Defendant, by and through its counsel of record, respectfully moves this Court for leave to file the attached Sur-Reply in Support of Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment Regarding Limitation of Action.

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

On July 3, 2014, Plaintiffs filed their Motion for Partial Summary Judgment Regarding Limitation of Action (Dkt. # 16) asserting that there is no limitation period for minimum wage claims in Nevada. On August 4, 2014, Defendant filed its Opposition (Dkt. # 29). An hour and a half later, Plaintiffs filed their Reply (Dkt. # 30).

Plaintiffs' Reply, which only tangentially addresses Defendant's Opposition was blatantly designed to raise several new issues and arguments that have not been previously addressed.

Specifically, Plaintiffs essentially abandon their original argument that there is no limitation period for minimum wage claims in Nevada. Instead Plaintiffs advance the argument that a four-year statute of limitations applies and that the continuing violations doctrine should apply as well. Neither of these arguments was raised by Plaintiffs' in their original Motion for Summary Judgment. As a result, Defendants seek the opportunity to respond to Plaintiffs' new arguments, and respectfully request that the Court grant its leave to file the attached Sur-Reply.

II. ARGUMENT

The Local Rules provide only for a memorandum in opposition and a reply brief. Local Rule 7-2. However, courts have recognized that where new evidence or arguments are raised for the first time in a party's reply brief in support of its motion, the court should permit the non-moving party to respond to the new matters prior to the deposition of the motion. *See i.e. FNBN-RESCON I LLC v. Ritter*, 2014 WL 979930, at *6 (D. Nev. Mar. 12, 2014); *see also Kanvick v. City of Reno*, 2008 WL 873085, at *1 fn. 1 (D. Nev. Mar. 27, 2008) *aff'd sub nom. Kanvick v. Reno City Police*, 339 F. App'x 745 (9th Cir. 2009) (finding a sur-reply may be filed by leave of court, and to address new matters raised in a reply to which a party would otherwise be unable to respond). For example, in *Ritter*, the court found that a sur-reply was appropriate when the plaintiff originally requested "all the relief requested in the Complaint," without limitation," but then in its reply "restricted the scope of its motion to a determination as to liability, not as to damages, and advanced several new arguments for why the Court could bifurcate its consideration." *Ritter*, 2014 WL 979930, at *6. The court further noted that it could either discard the plaintiff's arguments or provide defendants with the opportunity to respond. *Id.*

Here, Plaintiffs have raised new arguments in their Reply in Support of Motion for Partial Summary Judgment Regarding Limitation of Action. First, in the Reply, Plaintiffs modified their Motion for Summary Judgment by moving for a determination that NRS 11.220's four-year statute of limitations applies, something that was not raised by Plaintiffs in their Motion for Summary Judgment. Second, Plaintiffs asserted in the Reply for the first time that the continuing violation doctrine applies. Accordingly, Defendants should be allowed to file the attached Sur-Reply in order to respond to these new issues. ***See Proposed Sur-Reply attached hereto as Exhibit 1.***

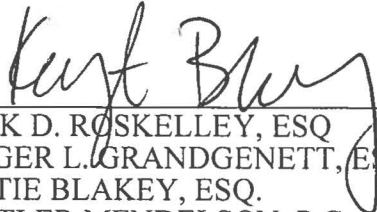
1 Alternatively, Defendant requests that the Court disregard Plaintiffs' new arguments presented in
2 their Reply.

3 **III. CONCLUSION**

4 For the foregoing reasons, Defendants respectfully request that the Court grant this Motion
5 for Leave to File a Sur-Reply and accept the attached Sur-Reply memorandum for filing.

6 August 12, 2014
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9 Respectfully submitted,

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11 RICK D. ROSKELLEY, ESQ.
12 ROGER L. GRANDGENETT, ESQ.
13 KATIE BLAKEY, ESQ.
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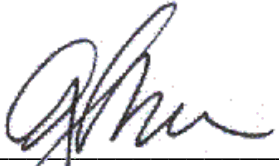
14 Attorneys for Defendant
15 BRIAD RESTAURANT GROUP, L.L.C.

16 **ORDER**

17 **THE COURT HAVING READ** the foregoing Motion for Leave to File Sur-Reply in
18 Support of Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment
19 Regarding Limitation of Action (ECF No. 31), and Plaintiffs' having filed their Non-
20 Opposition to Defendant's Motion (ECF No. 32), and good cause appearing therefore,
hereby GRANTS Defendant's Motion (ECF No. 31). Accordingly,

21 Defendant's counsel shall file with the court Defendant's Sur-Reply in Support of
22 Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment Regarding
Limitation of Action (ECF No. 31-1), attached to Defendant's Motion as Exhibit 1.

23 **DATED** this 13th day of August, 2014.

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26 Gloria M. Navarro, Chief Judge
27 United States District Court
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